

**SPECIAL MEETING
of the
CITY OF RIALTO
CITY COUNCIL
City of Rialto, acting as Successor Agency to the
Redevelopment Agency
RIALTO HOUSING AUTHORITY**

**MINUTES
June 22, 2015**

A special meeting of the City Council of the City of Rialto was held in the City Council Chambers located at 150 South Palm Avenue, Rialto, California 92376, on Thursday, June 22, 2015.

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This meeting was called by the presiding officer of the Rialto City Council in accordance with the provisions of **Government Code §54956** of the State of California.

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CALL TO ORDER

Mayor Robertson called the special meeting to order at 6:05 p.m.

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The roll was called and the following were present: Mayor Robertson, Mayor Pro Tem Baca Jr. and Council Member Shawn O'Connell. Also present were City Administrator Michael Story, City Clerk Barbara McGee and City Attorney Fred Galante. Council Members Ed Palmer and Ed Scott were absent.

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**Pledge of Allegiance
and Invocation**

Mayor Pro Tem Baca Jr. led the pledge of allegiance.

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TAB 1 – Presentation on the Brown Act/Public Meetings

City Attorney Fred Galante stated that it's important to understand the purpose of the Brown Act. Historically there were water districts other Government Agencies that would meet in private and there were no guidelines as to what types of actions could and could not be taken in private. Ultimately, the State of California and many states followed in determining that when a government agency does the people's business it should do so in an open and transparent manner. That was the essential foundation of the Brown Act. The legislative intent is written into the Statute "*Councils and other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and their deliberations be conducted openly.*" With that purpose in mind the law is geared to err on the side of having things aired out in the public as opposed to find reasons to keep things private. He will highlight the points that are most relevant to them as City Council.

The basic rule of the Brown Act is "*All meetings of the legislative body of a local agency shall be open and public and all person shall be permitted to attend any meeting of the legislative body of the local agency.*" They all know that the legislative body includes the City Council, but beyond that it also includes bodies that advise the City Council; standing committees and various commissions.

What does it mean "All meetings"? A meeting is together in a room, a quorum of the City Council. When a majority of the members meet to hear, discuss or deliberate upon any item which is within its subject matter, jurisdiction. The means of communications means everybody present in one room. It could also be through other forms of communications. Emails, texts, any other technological device employed by the majority of the City Council members to develop a collective concurrence and share ideas, thoughts and perspectives on an item. The Attorney General has given an opinion that email communications are sufficient to establish that meeting.

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Council Member O'Connell asked if intent play anything into this or just if it happens?

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City Attorney Galante stated that the difference between an intentional violation of the Brown Act and an innocent violation, is the difference between potentially being subject to criminal penalties versus having an action that requests the city Council correct the item and it's a civil action. When City Council or any legislative body makes a Brown Act violation there is a procedure to correct that.

The ways in which a meeting could be created are often through these more subtle forms of chains of communications. Council Member A contacts Council Member B and then Council Member B contacts Council Member C about an issue and there is a discussion.

**TAB 1 – Presentation on the
Brown Act/Public Meetings**

City Attorney Galante stated that if Council Member A says they have an issue with a project, what is their opinion? And Council Member B says yes, that is a concern. Even though Council Member C never talks to Council Member A, if Council Member B now shares both opinions, now 3 members understand what the majority holds on an issue that is within the subject of the City. This is considered a serial meeting, because it didn't occur all at once, it occurs through a chain of communication. The other form, which is the most subtle and the one he is often asked questions about. It's called the hub and spoke. There are times when a developer, City Attorney or City Administrator are communicating with Council Members separately. A developer says to Council Member A, they really should look at the merits of the project and by the way I met with Council Members B and C. Here are their ideas and concerns about the project. That developer, although there was never an intent by A, B or C, has created a Brown Act violation. On the intent, obviously there is no intent by the Council Members to have that happen. It can happen through this innocent communication process where suddenly its one sentence from a third party's mouth that expresses what other Council Members have as an opinion on an issue that is within the subject matter jurisdiction of the City.

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Mayor Pro Tem Baca Jr. stated what if one of them called 3 school board members they had concerns on an issue. Is that considered a hub and spoke violation?

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City Attorney Galante stated that scenario would not be a violation, if they were just expressing your opinion and it's a one way communication then no problem. They still remain a resident of the City and they can voice an opinion either as a resident or as a Council Member. If the School Board Member shares the opinion of other Council Members then that becomes a problem. Communicating a concern about an issue would not be a problem. If it solely concern a school board issue and totally out of the subject matter that the City would be involved with then arguably they can talk all they want. But if it involves the City then it could be a game changer.

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Mayor Pro Tem Baca Jr. stated in regards to subcommittees and they make recommendations to the City Council. In communication with the City Administrator or City Attorney on these issues, how do they avoid a Brown Act violation?

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TAB 1 – Presentation on the Brown Act/Public Meetings

City Attorney Galante stated there is a difference between a standing committee and an ad-hoc committee. An ad-hoc committee doesn't need to meet per the Brown Act. It's created to oversee a particular project and then disbands. It's created with no more than 2 council members. Once a third Council Member starts hearing about the issue, there has to be a two-way communication for a risk of a problem. The obvious one would be if a third Council Member sits on an ad-hoc committee is a problem when there is a discussion. If the third Council Member sits in the audience and hears then there is less of a risk to share opinions. The bigger problem is a hub and spoke. If two ad-hoc members are communicating and then a third member starts asking questions. As long as there isn't communication about how other Council Members feel about a particular issue there isn't a problem. But there is a lot of potential risk.

What is not considered a meeting? If it's not a quorum, if it's two members discussing an issue. It's when the third member that get involved that it's a problem. Attendance by a majority of the City Council at a conference or an open public school board meeting is no problem. Or a social or ceremonial occasion. Four Council Members can have a golf outing and it's no problem. They can speak about anything but if the conversation turns to City issues this becomes a problem.

What types of meetings does the Brown Act cover? Regular meetings of the City Council, they discuss whether it's a City Council or water district, school board, etc., where the meetings are held, what times and interested members should be able to find it on an Ordinance or some publicized manner, so its stablished and reoccurring at a set time. Notice has to the public has to be sent out 72 hours in advance.

Special Meetings. The presiding officer or a majority of the legislative body may call a special meeting at any time. Written notice must be delivered to each member of the legislative body (unless waived in writing by that member) and to each local newspaper of general circulation, and radio or television station which has requested such notice in writing at least 24-hours before the time of the meeting. Only the business set forth in the notice may be considered at the meeting.

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Mayor Pro Tem Baca Jr. asked to add an agenda item doesn't it take the majority of City Council?

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City Attorney Galante stated that the general rule and cities often change this rule, that the chair or mayor can call a meeting or by the majority of council members.

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Mayor Robertson stated so the Oral Communication period would be restricted to the item for the special meeting?

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TAB 1 – Presentation on the Brown Act/Public Meetings

City Attorney Galante stated correct, oral communications would only be restricted to the issues on the agenda.

The Brown Act also speaks to where meeting may be held. Regular and special meetings must be held within the City limits except when:

1. Complying with **federal or state law** or court order.
2. Inspecting **real property or personal property** that cannot be conveniently brought to the City.
3. Participating in **multi-agency meetings** (provided the meeting takes place in a member agency's jurisdiction and is properly noticed).
4. Meeting in the **closest meeting facility** if the local agency has no meeting facility within its boundaries.
5. Meeting with **elected or appointed federal or state officials** when a local meeting would be impractical (solely to discuss local issues over which such officials have jurisdiction).
6. Meeting in or nearby a **facility owned by the agency** (provided the meeting is limited to items directly related to the facility).
7. Visiting the **office of its legal counsel** for a closed session on pending litigation when to do so would reduce legal costs. (§ 54954).

What are the Agenda requirements?

A written agenda must be prepared for each regular or adjourned regular meeting of each legislative body.

The agenda must be posted at least 72 hours in advance of the meeting to which it relates.

Each item of business to be "transacted or discussed," including items to be discussed in closed session, must be the subject of a "brief general description" which generally need not exceed 20 words. (§ 54954.2).

Non-Agenda Items. Action or discussion on any item not appearing on the posted agenda is generally prohibited except that members may **briefly respond** to statements made or questions posed by the public.

Members may:

- ask a question for clarification
- make a brief announcement
- make a brief report on activities
- provide a reference to staff or other sources for factual information
- request staff to report back to the legislative body in a subsequent meeting

A member of the legislative body, or the body itself, may take action or direct staff to place a matter of business on a future agenda. (§ 54954.2).

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TAB 1 – Presentation on the Brown Act/Public Meetings

Mayor Pro Tem Baca Jr. stated if they have a member of the public come to the podium and wants to get into a discussion about a non-agenda item. Would it be advisable to have them speak to staff separately?

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City Attorney Galante stated yes, and he tried to jump in. Once it goes back and forth a few times this is when it goes beyond. The term “briefly respond” is in the Brown Act. It doesn’t have any definition. If it’s one or two who give a short response that is one issue and it falls within the exception. But when the audience member responds and then there is another response from City Council then this is when it becomes a problem. The safest approach is to have staff to provide information to the person.

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Council Member O’Connell stated they are not trying to prevent anyone from talking to them. If it’s something they need to address, they can hear it and if it’s something more they can put it on a future Agenda.

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City Attorney Galante stated that is correct. Any member can ask for an item to come back on the Agenda.

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Mayor Pro Tem Baca Jr. stated that it’s not the intent to not allow people to speak. They do want to be able to answer concerns and questions.

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Mayor Robertson stated that if a brief answer can be given to a questions but an expectation to resolve the matter right then cannot happen with a non-agenda item. She is always concerned about that there is often an expectation that someone will make a non-agenda statement and expect a response. It’s not necessarily meant for them to respond or debate it.

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City Attorney Galante stated that its good practice to, if a question or an issue is raised, rather than having the City Council respond right away there are some city councils that let all the speakers speak. Even if they ask a direct question, the Mayor will say the rules state they are there to accept their oral communications and City administrator will provide a response or City Council will respond during their comment period. This avoids having the risk of back and forth communications and just following protocol.

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TAB 1 – Presentation on the Brown Act/Public Meetings

Statutory exceptions to action on non-agenda items.

A legislative body may take action on items of business not appearing on the agenda under the following conditions:

- a. *Emergency Situation*: When a majority decides that an emergency situation exists (i.e., work stoppage, crippling disaster, etc.).
- b. *Subsequent Need Item*: When two-thirds present (or all members if less than two-thirds are present) determine there is a need to take immediate action and that the need for action “came to the attention of the local agency subsequent to the agenda being posted.”
- c. *Hold Over Items*: When the item appeared on the agenda of, and was continued from, a meeting held not more than five (5) days earlier. (§ 54954.2(b))

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Mayor Pro Tem Baca Jr. stated any time they hold over an item or table it and bring it back, do they have to give a subsequent date?

City Attorney Galante stated that is the item they spoke of specifically; an adjourned meeting. When an item doesn't have any urgency, they can ask to table it indefinitely until staff can come back with further information or say they would like it on the next agenda with additional information.

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Who can attend a meeting? “...ALL PERSONS SHALL BE PERMITTED TO ATTEND...”

- Members of the public cannot be required to register their names, provide other information, complete a questionnaire, or otherwise “fulfill any condition precedent” to attending a meeting.
- No meeting or any other function can be held in a facility that prohibits attendance based on race, religious creed, color, national origin, ancestry or sex, or which is inaccessible to the disabled. [*But see Atty Gen'l Op. 00-1210 (11/14/01) (City not required to accommodate disabled city council member by providing teleconferencing connection at member's home which is not open to public.)*]
- Nor can a meeting be held where the public must make a payment or purchase in order to be present.
- Action by secret ballot, whether preliminary or final, is prohibited. (§§ 54953.3; 54961; and 54953(c))

TAB 1 – Presentation on the Brown Act/Public Meetings

City Attorney Galante stated the theory is City Council needs to be fully accessible and they cannot discriminate and they can't say to a member of the public they are not allowed to speak unless they sign a card. There is nothing wrong with asking members of the public to register their names. There are valid reasons for having that, especially in a public hearing setting. When a member of an audience speaks on a hearing item and that person refuses to state his or her name, the testimony provided has no weight in a legal action.

When a document is provided by a member of the audience there is an obligation to provide it, if the City has the capability to make copies. But anything that the City distributes has to be made available to the public, within the time of the meeting or after the meeting if prepared by somebody other than the City.

Public Participation:

- A regular meeting agenda must allow an opportunity for members of the public to speak on any item of interest, so long as the item is within the subject matter jurisdiction of the legislative body.
- The public must be allowed to speak on a specific item of business before or during the legislative body's consideration of it.
- The legislative body may adopt reasonable regulations, including time limits, on public comments (e.g., five minutes). (§ 54954.3)

Actions of the Legislative Body:

SB 751, eff. 1/1/14, requires legislative bodies to publicly report action taken in any meeting, and the vote or abstention on that action of each member present. As a practical matter, unless it is clear to persons attending how each member voted, votes may need to be taken by roll call or in another manner that allows verification of the vote of each member in order to comply with the requirements of SB 751.

This rule was crafted to address the larger boards, such as Metropolitan Water Agency that has 20 members. They have electronic voting that wasn't displayed. This Bill, targets those issues because members of the audience should know and understand how each member of the board votes. A roll call vote is not required if everyone understands how everyone has voted.

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Mayor Pro Tem Baca Jr. asked if they have to leave the dais when they abstain or can they abstain from the dais?

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City Attorney Galante stated on a Consent Calendar item, the appropriate practice is to stay at the dais and simply register the abstention. For an actual conflict of interest, if they want to abstain, they should leave the council chambers. If it's an item of interest to them as a resident of the city they may speak as a resident and not as a Council Member.

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TAB 1 – Presentation on the Brown Act/Public Meetings

Public Conduct:

- Expressions of support or opposition to matters before the agency (provided they are not overly disruptive) constitute protected speech.
- The legislative body cannot prohibit public criticism of policies, procedures, programs, or services of the agency or the omissions of the legislative body itself. (§ 54954.3(c).)

City Attorney Galante stated that people's perspective and opinions cannot be the reason why the person is excluded. It's more of when a person becomes disruptive and disrupts a meeting, the Mayor can request a person to be removed.

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Mayor Robertson stated that this often comes up and the concern was, "...or the omissions of the legislative body itself." There has been a time where there was concern of people making comments directly to one of the members. From what she is reading, is counsel saying that this can be allowed?

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City Attorney Galante stated yes, a lot of cities have a rule where direct communications to a council member are prohibited. But, communications to the City Council as a whole is always appropriate.

The League of California Cities model Rules of Decorum include this. Questions or issues or comments should be directed to City Council as whole. This does not mean those comments cannot say "City Council I have an issue with Council Member X because of..., regarding City issues." This is a communication to the whole City Council. The theory is it prevents a personalized attack directed to a particular person and often times becomes a reason why the particular council member will want to respond and engage in a dialogue.

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Council Member O'Connell stated that the only concern he had, he understands the benefit of it not being a personal attack on him, if someone speaks at the podium and they usually are not use to speaking in public. If they come up and say Council Member O'Connell I have a problem with what you did last time. They say, the person is not allowed to talk to Council Member O'Connell but the board as a whole. They need to follow up and explain how they can share information to encourage the communication.

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City Attorney Galante stated that is a reasonable point to make. Because some see it as a subtle distinction, some cities don't have it in their rules. Certainly if City Council keeps it in the policy, he will make sure to point that out, if the issue comes up.

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TAB 1 – Presentation on the Brown Act/Public Meetings

CLOSED SESSIONS: "... EXCEPT AS OTHERWISE PROVIDED..."

- The exceptions to the Brown Act's requirement that all meetings be open are termed "closed sessions" and include:
 1. Personnel Matters
 2. Pending Litigation
 3. Real Estate Negotiations
 4. Labor Negotiations

City Attorney Galante stated that he didn't speak on commissions, the Brown Act has a lot of nuances. On committees that are formed, he did mention the difference between an ad-hoc and a standing committee. Standing committee is the Planning Commission, oversight on an issue that will continue to be an issue of interest to the City and that they would like advice from a particular committee. An ad-hoc committee is not subject to the Brown Act. Those rules don't apply if there are more than 2 members of the City Council on the committee. If the committee has non-council members it may become subject to the Brown Act.

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REMEDIES AND PENALTIES

- Criminal Charges
- Civil Action
- Request to Cure
- Invalidation
- Costs and Attorney's Fees

CRIMINAL PENALTIES

- A violation of the Brown Act may result in a misdemeanor charge against a member where:
 1. action is taken in violation of the Brown Act; **and**
 2. the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled.(§ 54959)

CIVIL ACTION

The district attorney or any interested person can file a civil action asking the court to:

- Stop or prevent violations or threatened violations of the Brown Act by members of the legislative body;
 - Determine the applicability of the Brown Act to actions or threatened future action of the legislative body;
 - Determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid under state or federal law; or
 - Compel the legislative body to tape record its closed sessions.
- (§ 54960)

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TAB 1 – Presentation on the Brown Act/Public Meetings

Mayor Robertson asked if the department heads are subject to fall under the hub and spoke rule.

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City Attorney Galante stated it can be anybody, even a family member, you chat with and run into two other council members and tells them how they feel about an issue.

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George Harris, Administrative and Community Services Director stated that he wanted to be clear because they have budget update meetings. They meet with Council Members individually and potentially two at a time. If they are asked or providing an opinion heard by other Council Members with one another, this is where they cross the line? They are obligated to not provide information from another council member, whether asked or not.

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City Attorney Galante stated that goes to a point of hearing a discussion. If City Council meets with the Finance Director to hear the budget, they can give their opinion if just two council members at a time. When the Finance Director meets with two other council members, he has to make sure he doesn't share those opinions with the others.

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Mayor Robertson stated regarding avoiding the serial meeting, the scenario given, it only takes 3 members correct?

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City Attorney Galante stated yes, it only takes 3 members.

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City Administrator Story asked if City Attorney Galante can explain verbal communication turning into written communication can be a violation. What is the rule when a council member is requesting information, should information go to one or all?

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City Attorney Galante stated an issue of whether a communication that is shared to one council member is then to be shared with the rest of City Council is not a Brown Act issue. It's just a policy that various cities have. The Brown Act issue that is raised with this type of practice is, if he shares a communication of any form, it's a one way communication. And any one council member may respond and share thoughts. When he sends an email to City Council, he puts "do not reply to all", to avoid a Brown Act violation.

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TAB 1 – Presentation on the Brown Act/Public Meetings

Mayor Robertson stated in regards to the location of meeting, she recalls they had continued a meeting because they were going to hold it in another location. When she reads the items here, she doesn't see a reasoning for it.

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Mayor Pro Tem Baca Jr. stated it was when they went to Washington DC for a lobbying trip to prevent a Brown Act violation of three or more members. Do they have to post that?

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City Attorney Galante stated that the exception would be that there isn't a discussion of any council member opinions or deliberations. They were probably pleading at an open and publicized meeting of another body.

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Mayor Pro Tem Baca Jr. stated no for example, they were going to the office of members of Congress, to lobby water issues.

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City Attorney Galante stated if the City Council is authorizing three members to go and lobby for an issue and it's a one way discussion of an issue. There really isn't a meeting, they are not discussing or deliberating on an issue. It's more of a presentation about Rialto on whatever the issue. There have been times where a Council Member really wants to participate in a meeting but they are not able to show up to the location, they have to post outside of the location of where they are saying a Rialto Council Meeting is occurring and anyone wishing to attend that location may attend. Every teleconference location has to be open and public. He has had it happen at a hotel.

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ORAL COMMUNICATIONS

David Phillips, 659 N. Teakwood Ave., expressed his concern that he did not know about this meeting. He expressed his concerns regarding some of the items pertaining to the Brown Act.

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Council Member O'Connell regarding the hub and spoke, avoiding the serial meeting, if he speaks to a department head and 2 other members speaks to the department head, they become a spoke. He has made himself available to the public, he has left his home phone number. He was cautious when he met with the developers and realized it was his responsibility to listen to everyone. Is there a form or card, so before they sit and meet with either a citizen or a developer so they know what they can't talk about?

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TAB 1 – Presentation on the Brown Act/Public Meetings

City Attorney Galante stated that he will be happy to provide that but he summed it up very well by saying “I don’t want to hear any opinions of other council members”. If they say exactly that then that addresses the particular issue that is the risk. Beyond that, if they want anything more detailed, he is happy to provide that.

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Council Member O’Connell stated that he would like to hand somebody something they can hold and read.

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Robb Steel, Development Services Director stated that he struggles with Development Agreements and what aspects of those they can bring into closed session. He knows the real estate negotiations is supposed to be restricted to price and terms. With development agreements they talk about things that have value and exchange and a lot of times they don’t want the other party to know what they are willing to offer and exchange. They don’t have a perfect fit with the Brown Act requirements on real estate negotiations, are there alternatives to closed session?

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City Attorney Galante stated that he has been on a discussion with City Attorney representatives addressing why the Brown Act picked certain issues to include and not include. For example, real estate negotiations or other important negotiations that require discretion. The only other way these issues get addressed is through a Council sub-committee and the theory being that the sub-committee helps guide staff in negotiations. It’s one that is a little bit arbitrary in the provision of the Brown Act. It was recently limited, because real estate negotiations only means price and terms. It used to be broad, with concessions. The legislation narrowed it down to price and terms only.

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Robb Steel, Development Services Director stated that it’s limited to price and terms of sale or purchase.

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City Administrator Story stated when they deal with staff or developers on various projects, they are talking about how they protect the City Council and making sure they don’t step into the Brown Act violation. A developer can put them in an awkward spot, having the opinions of all the Council Members. He can speak or withhold information knowing that he has already spoken to other Council Members. How do they deal with those situations when they want to be open and talk to them all?

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City Attorney Galante stated that he advises to avoid it. If they know a person has spoken to a couple of Council Members, his suggestion is to avoid communication with that person. Often that is not realistic, but risk is human nature to have a dialogue about a particular issue. The dialogue could include all the information that the person has on the issue. If it's a developer wanting to build something in the city, part of that is how do people feel about my project. Perhaps they talk about what residents say. The temptation of explaining how other Council Members feel is there. He suggests that the conversation be avoided. Other than that, say very clearly "I don't want to hear the opinions of other Council Members."

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ADJOURNMENT

Motion by Mayor Pro Tem Baca Jr., second by Council Member O'Connell and carried by unanimous vote to adjourn the City Council meeting at 7:25 p.m.

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